

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND ) MDL NO. 13-02419-FDS  
COMPOUNDING )  
PHARMACY CASES LITIGATION )  
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BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

STATUS CONFERENCE

John Joseph Moakley United States Courthouse  
Courtroom No. 2  
One Courthouse Way  
Boston, MA 02210

January 10, 2014  
1:30 p.m.

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PROCEEDINGS

THE CLERK: All rise. Thank you, all.  
Please be seated. Court is now in session in the matter  
of In Re: New England Compounding Pharmacy, Incorporated  
Products Liability Litigation. This is Case  
No. 13-md-02419.

Counsel, please note your appearances for  
the record. We'll start with the PSC.

MR. SOBOL: Good afternoon, your Honor,  
Tom Sobol for the plaintiffs' steering committee.

MS. PARKER: Good afternoon, your Honor,  
Kristen Johnson Parker for the plaintiffs' steering  
committee.

MR. ZAMORA: Mark Zamora for the PSC.

MS. DOUGHERTY: Good afternoon, your Honor,  
Kim Dougherty from Janet, Jenner & Suggs on behalf of  
the PSC.

MR. GASTEL: Good afternoon, Ben Gastel from  
Branstetter, Stranch & Jennings on behalf of the PSC.

THE COURT: Good afternoon, all.

MR. FENNEL: Good afternoon, your Honor,  
Patrick Fennell from Crandall & Katt, Roanoke, Virginia  
for the PSC.

MR. MOLTON: Good afternoon, your Honor,  
David Molton and Kiersten Taylor of the creditors'

1 committee for the creditors' committee.

2 THE COURT: All right. Good afternoon.

3 MR. GOTTFRIED: Good afternoon,  
4 Mike Gottfried for the trustee, Paul Moore. With me, my  
5 partner, Jeff Sternklar.

6 MR. STERNKLAR: Good afternoon, your Honor.

7 MR. KLARFELD: Good afternoon, your Honor,  
8 Joshua Klarfeld on behalf of GDC.

9 MR. FERN: Good afternoon, Judge,  
01:33PM 10 Frederick Fern, specially-retained counsel for the  
11 Chapter 11 trustee.

12 MR. RABINOVITZ: Good afternoon, your Honor,  
13 Dan Rabinovitz on behalf of Medical Sales Management.

14 MS. PEIRCE: Your Honor, Michelle Peirce for  
15 Barry and Lisa Cadden individually.

16 MR. GAYNOR: Robert Gaynor for the  
17 affiliated individuals.

18 MR. O'HARA: Good afternoon, your Honor,  
19 Christopher O'Hara. With me is Corrina Hale on behalf  
01:33PM 20 of Doug and Carla Conigliaro.

21 MR. MORIARTY: Happy New Year, your Honor,  
22 Matthew Moriarty for Ameridose.

23 THE COURT: Good afternoon, all. We have a  
24 number of people on the telephone participating as well.  
25 I have received the corrected agenda for the status

1 conference, which I guess we will follow. To state the  
2 obvious, in light of the settlement with the affiliated  
3 parties, what I hope will be a finalized settlement  
4 reasonably soon, the litigation may take a somewhat  
5 different course.

6 We may need to rethink or restructure some  
7 things, but why don't we follow the agenda and take each  
8 issue as they come. Ms. Parker, do you want to take the  
9 lead here?

01:34PM 10 MS. PARKER: Yes, thank you, your Honor.  
11 I'll address agenda item Number 1. Before we get there,  
12 I should note that we did file a corrected agenda this  
13 morning. We noticed a deadline that was stated in item  
14 Number 1, it was dated incorrectly. We corrected that.  
15 We also in the process added a few of the agenda items  
16 that the PSC thought warranted mention. We did not,  
17 however, share that with all of the defense counsel and  
18 the trustee before we did so, so it's not truly a joint  
19 corrected agenda, just to clarify that.

01:34PM 20 THE COURT: All right.

21 MS. PARKER: In terms of the short form  
22 complaints, as your Honor is aware, the deadline of  
23 December 21st came and went. Many short form complaints  
24 have been filed. The PSC was pleased to see that.  
25 We're in the process of conducting a census of those



1 short form complaints to really get our hands around how  
2 many have been filed, who has been named as defendants,  
3 which entities have been named as defendants. We intend  
4 to present a brief filing next week that presents some  
5 basic numerical information about that, and we intend to  
6 file that on the docket if your Honor will permit.

7 Attendant to that then would be an overview  
8 that I think Mr. Sobol would like to give on where  
9 things stand.

01:35PM

10 MR. SOBOL: So that the summary, whatever,  
11 will be submitted to the Court, as Ms. Parker indicates,  
12 next week. Given the other things that have happened, I  
13 thought it made sense to do just a very brief overview.  
14 So as the Court understands, there is a settlement in  
15 principal which we'll turn to in terms of a different  
16 agenda item in a moment with NECC, Ameridose, MSM, other  
17 affiliated entities and the three families, the two  
18 Conigliaro families and the Cadden families.

01:36PM

19 In addition to that then, the short form  
20 complaints and the other litigation tell us that there  
21 are in excess of -- well, that there still remains some  
22 national defendants that may not be in mediation yet at  
23 this point. As to clinics, they'll probably be --

24 THE COURT: By national defendants, you mean  
25 Liberty and UniFirst?

1 MR. SOBOL: Fair enough. I'll be more  
2 precise then and also deal with the status and mediation  
3 of 2, agenda Number 2 to put this all in perspective.

4 My understanding is that the following  
5 entities are in the Court-ordered mediation: ARL,  
6 Victory, Liberty, Orlando and West Orange, a Florida  
7 clinic. In addition, there is a mediation with Inspira,  
8 a New Jersey entity, and another entity that I'm not at  
9 Liberty to disclose at this time, so those are the  
01:37PM 10 entities or clinics that are in mediation. Beyond those  
11 entities, there will probably be in excess of about 20  
12 other clinics that are named as defendants in lawsuits  
13 that are here in this MDL.

14 There may or may not be, I can't recall off  
15 the top of my head, any defendant that would be exposed  
16 to national liability. UniFirst, thank you, is that  
17 entity. What also -- and so litigation will, therefore,  
18 proceed against the nonmediating entities and the  
19 nonaffiliated defendants and NECC, those kinds of folks.

01:37PM 20 What also emerges from that is that another  
21 agenda item that we'll address later on is that the PSC  
22 has been undertaking a triage of what makes the most  
23 amount of sense, what to focus on and when, and  
24 certainly what emerges from that is the following two  
25 global observations:

1 First, it appears clear that the St. Thomas  
2 entities, which are clinics, if you will, in Tennessee  
3 are litigating clinics that have the largest number of  
4 victims associated with them in that St. Thomas will  
5 likely be a focus of litigation here in the MDL, to be  
6 sure.

7 In addition, there is the question that is  
8 emerging that people will address later on at this  
9 hearing or elsewhere as to whether or not InSight from  
01:38PM 10 Virginia, which is currently the subject of litigation  
11 in state courts in Virginia, will either continue to go  
12 forward with litigation in Virginia or be moved here in  
13 the MDL, and given the magnitude of the issues with  
14 respect to that entity, it would probably fall into the  
15 same bucket as the Tennessee/St. Thomas here in the MDL,  
16 things to move forward with post-haste.

17 The remaining issues, we, the PSC, and the  
18 defendants still need to go through, so we have to do  
19 the consensus about what other clinics really are being  
01:39PM 20 sued, how many are here and what makes sense in terms of  
21 moving those cases forward or not, so we'll be in the  
22 process of doing that.

23 The reason I wanted to give this overview  
24 and also discuss, identify the entities that are in  
25 mediation is that as you have, your Honor, indicated,

01:40PM

1 quite correctly, toward the end of last year, you wanted  
2 to find out where things were with the NECC and related  
3 folks to be able to figure out how this MDL is shaping  
4 up, and so that I think how it's shaping up in terms of  
5 just general overview is you have this settlement with  
6 the related entities and insiders, so to speak, that's  
7 making its way forward, you've got some mediations that  
8 are underway, that hopefully will resolve themselves in  
9 the next couple of months, and then we've got a couple  
10 of declaratory judgment actions regarding a couple of  
11 policies on Ameridose that will need to be dealt with in  
12 the MDL, and then, finally, we have certainly in terms  
13 of core key kind of litigation, St. Thomas, which will  
14 have to go forward, and then we'll have to work our way  
15 through the other clinics and what happens with  
16 Virginia, and that's really what I would have to say  
17 about the overview and the status of mediation efforts.

01:40PM

18 THE COURT: All right. Let's circle back to  
19 the question of the short form complaint. Someone stood  
20 up. Yes, sir, can you identify yourself.

21 MR. BLUMBERG: Jay Blumberg, your Honor,  
22 from Premier defendants in New Jersey. I had filed a  
23 response to the motion to extend the time to file a  
24 master complaint against the affiliated defendants  
25 because in December, I stood up here and asked your

1 Honor or told your Honor that I was somewhat concerned  
2 about having to file a responsive pleading to my short  
3 form complaint without knowing whether the affiliated  
4 defendants are going to be in the case or not, and,  
5 procedurally, if they're in the case, I have to file  
6 cross-claims against them; if they're not in the case, I  
7 have to file third-party complaints against them, and I  
8 don't know which way at this point in time that that's  
9 going to roll.

01:41PM

10 I think we all can guess that it's probably  
11 going to be that we're going to have to file third-party  
12 complaints, but we don't know for sure at this point, so  
13 in conjunction with my response, I filed a motion  
14 basically to extend the time for us to respond to the  
15 short form complaints, which are due today, and I think  
16 your Honor had indicated at the last conference that an  
17 emergency motion might be entertained with respect to  
18 that if there was some concern, so now I have that  
19 concern, and I do ask the Court to consider whether --

01:42PM

20 and I don't know how many other people, nobody else  
21 joined in this, so I don't know how many other people  
22 this impacts. But if Mr. Sobol is correct, it may be 20  
23 other entities or more that are in the same situation in  
24 which we really need to know whether the affiliated  
25 defendants are going to be defendants or not.

1 THE COURT: Well, it raises in my mind what  
2 are perhaps a dumb question or series of questions, but  
3 I'll put it on the table, what happens if this  
4 settlement doesn't go through, what happens with  
5 cross-claims or third-party complaints?

6 NECC I think is the only entity in  
7 bankruptcy, and if you had a third-party complaint  
8 against an affiliated company, what happens with that  
9 going forward, and I don't know the answer to that.

01:42PM 10 Does someone want to take that up at least  
11 as a general proposition?

12 MR. BLUMBERG: I could tell you that in  
13 New Jersey what would happen in those circumstances is  
14 that the cross-claims would survive to the extent that  
15 the remaining defendants would get a credit for whatever  
16 percentage of negligence is attributable to that  
17 settling defendant, and I would take the position that  
18 that includes not just the nonbankruptcy defendants but  
19 the bankruptcy defendants as well, which is why it's  
01:43PM 20 important for us to keep them in the case not because  
21 they're going to be responsible to pay any more money  
22 but because, at least in New Jersey, procedurally, we  
23 would be entitled to a credit for that.

24 THE COURT: All right.

25 MR. SOBOL: If I may, your Honor.

1 THE COURT: Yes.

2 MR. SOBOL: If the settlement does go  
3 forward, if the proposed settlement, the settlement  
4 that's in principal becomes a documented settlement, the  
5 position of the PSC would be that there should be no  
6 litigation with respect to any of the proposed settling  
7 parties.

8 In addition, I think it's fair to say,  
9 because there's been no mystery, that the proposed  
01:44PM 10 settlement is one in which it is intended, when all is  
11 said and done through a plan of reorganization or  
12 confirmation of a plan for NECC and the bankruptcy court  
13 that there is functionally a nondebtor release or a  
14 channeling injunction that presents any further  
15 litigation against those entities.

16 So that's the short answer to that specific  
17 question. How that shakes up in terms of other  
18 defendant's rights is a different matter.

19 THE COURT: And, obviously, I'm not familiar  
01:44PM 20 with the particular state procedural requirements or how  
21 this plays out in New Jersey, Tennessee, Virginia and so  
22 forth. Mr. Molton, did you want to weigh in?

23 MR. MOLTON: Yes, Judge, I just want to  
24 confirm with the Court what Mr. Sobol said is that  
25 taking aside the state court issues, what credits, you

1 know, certain defendants might get as a result of the  
2 settlement, which is independent of the release issue,  
3 it's the contemplation of the trustee and the committee  
4 to put forward a plan, a Chapter 11 plan, that includes  
5 the settlement and as part of that settlement will have  
6 in a confirmation order what we call nondebtor releases  
7 and injunctions in aid thereof.

8 That basically ends the litigation against  
9 all the participants in the competition pot, and that  
01:45PM 10 won't necessarily only stop with the affiliated  
11 defendants, your Honor, because the intention, and I  
12 know Mr. Sobol just talked about the mediations, but  
13 it's the intention of the bankruptcy constituencies as  
14 well as the PSC through the mediation orders and  
15 otherwise to incent the remaining defendants,  
16 non-settling defendants, whoever they may be, whether  
17 they be the national defendants, the clinics, the  
18 doctors or whatever, to come join us in mediations in  
19 which case if those mediations are successful, they will  
01:45PM 20 also, their settlements will also be part of the plan,  
21 the Chapter 11 plan, that will protect them in the same  
22 way.

23 Just to follow up on what Mr. Sobol said,  
24 it's important to note, your Honor, since the settlement  
25 was announced and also not only the finding of the



1 mediation joinders by the national defendants but also  
2 Inspira's announcement basically by the stay order, the  
3 consensual stay stipulation of discovery that your Honor  
4 executed and entered, that we've been getting a lot of  
5 inquiry from other participants in this MDL as to how  
6 the mediation works and what the benefits are, and  
7 hopefully over the next couple months, your Honor, we'll  
8 see increasing participation in the mediation program.

01:46PM 9 THE COURT: In the meantime, Mr. Blumberg  
10 has asked for an extension to April 10th to respond. Is  
11 there any objection anyone has to me granting that which  
12 will effectively allow that issue to be put on hold  
13 while we sort out what the settlement looks like and how  
14 this is going to play out?

15 MS. PARKER: We have no objection to that  
16 extension for Mr. Blumberg.

17 THE COURT: All right. To the extent,  
18 Mr. Blumberg, that you have cross-moved to extend the  
19 deadline to file responsive pleadings, which is  
01:47PM 20 Number 751, that motion is granted, and you'll have  
21 until April 10th, 2014 to file responses.

22 MR. BLUMBERG: Thank you, your Honor. At  
23 that point in time, if third-party complaints are going  
24 to have to be filed, I'd like to pose that we discuss at  
25 least a proposal for how that's to be handled such as

1 maybe a master third-party complaint to be filed so that  
2 the other defendants can use that and file short form  
3 complaints and won't be burdened with 60,000 complaints.

4 MR. BLUMBERG: Fair enough. Thank you, your  
5 Honor.

6 THE COURT: That may be sensible, but we'll  
7 have some time to sort that.

8 MS. GREER: Your Honor, Marcy Greer for the  
9 St. Thomas entities.

01:48PM 10 THE COURT: Yes.

11 MS. GREER: Just for clarification, the  
12 motion was made on behalf of all the defendants, which  
13 is the new April deadline for third-party complaints by  
14 all defendants.

15 THE COURT: I thought it was only for  
16 Premier.

17 MS. GREER: The request was that the  
18 deadline be extended.

19 THE COURT: Is that a problem then across  
01:48PM 20 the board? In other words, does anyone have an  
21 objection to me having this apply to not just to the  
22 Premier defendants from New Jersey but all the  
23 defendants?

24 MR. SOBOL: There's a lot of whispering at  
25 our table, your Honor. I think we need to think about

1 it. I'll need to check it, but there's some whispering.  
2 I think in order for us to have a more intelligent  
3 answer, we may have to get back to you somehow, take a  
4 quick break or --

5 THE COURT: Why don't we handle it this way.  
6 To the extent that those responses are due January 10th,  
7 I will extend to all defendants. Why don't we make it a  
8 minimum of three weeks to January 31st, and if we -- if  
9 there's an issue, Mr. Sobol, I'll hear from you. I  
10 think your opposition would be due January 31st, in any  
11 event, if you're going to oppose it.

12 MR. SOBOL: Correct.

13 THE COURT: We'll handle it that way. In  
14 the short term, everyone has until January 31st, Premier  
15 has until April 10th, Premier defendants, and maybe all  
16 defendants will have until April 10th.

17 MR. SOBOL: We'll take into -- just so that  
18 I don't think that counsel -- we're not going to try to  
19 sandbag, our response will deal with that some more time  
20 regardless of what it is, assent to something beyond  
21 that anyway.

22 THE COURT: Right. Yes, I'm sorry, who is  
23 this? Does someone want to speak on the telephone? No.  
24 I'm somewhat in the dark here not only as to the details  
25 of the settlement or how counsel plan or hope or intend

1 for this to work out, but I'm also obviously not  
2 familiar with the nuances of New Jersey and Tennessee  
3 law and so forth, and I don't know what consequence may  
4 come from these orders, so what I'm hoping is that,  
5 again, the parties will have the chance to sort that out  
6 or to inform me or to state their perspective positions.  
7 Will that work, Ms. Greer?

8 MS. GREER: Yes, your Honor.

9 THE COURT: Before I forget the thought on  
01:50PM 10 the short form complaints, someone, maybe more than one  
11 counsel, raised the issue as to service of short form  
12 complaints. Just so that it's clear, anyone who filed  
13 an earlier complaint, a standard complaint, for example,  
14 in the State of Tennessee or the State of Virginia who  
15 later adopted the short form complaints, has amended the  
16 complaint, that complaint doesn't need to be reserved,  
17 but if it's a new case and you're adopting the short  
18 form complaint for the first time, you have to serve  
19 defendants like in any other case, if that makes sense.

01:50PM 20 There does seem to be some question about  
21 that. In other words, we're not waiving the service  
22 requirements of Rule 4, the case has to start with  
23 service of process.

24 MS. PARKER: That was the plaintiffs'  
25 steering committee's understanding, your Honor, and

1 that's what we have shared with other plaintiffs'  
2 counsel.

3 THE COURT: All right. Anything else on the  
4 agenda Number 1? Ms. Greer.

5 MS. GREER: Your Honor, I apologize, one  
6 other issue. There is only one plaintiff who we had  
7 found who had filed a long form original complaint that  
8 did not file a short form, and you had given us till the  
9 15th to respond to that complaint.

01:51PM 10 THE COURT: Yes.

11 MS. GREER: Do we do something with that?  
12 We'll be filing a motion to dismiss as to it. Quite  
13 frankly, a lot of the short form complaints have been  
14 incorporated by reference to the original complaints, so  
15 it's kind of all in the mix.

16 THE COURT: Why don't we do this. Why don't  
17 I add 30 days to that response. That will get us  
18 through the next status conference, and we can see how  
19 that plays out. It's not been clear to me from the  
20 beginning how we handle the cases of plaintiffs who  
21 don't adopt the short form complaint other than my  
22 instinct was this could go to the back of the line  
23 because I have my hands full dealing with the short form  
24 complaint and other issues.

01:52PM 25 MS. GREER: Although, quite frankly, your

1 Honor, we weren't expecting that there would be some  
2 incorporated by reference in full their prior  
3 complaints, so it's all kind of in the mix. It might  
4 make sense to just put this Temple case in with the  
5 others and let us add it to our global motion to  
6 dismiss.

7 THE COURT: Well, in the meantime, as to  
8 that particular case, I will grant you an additional 30  
9 days to respond. Your response was due when?

01:52PM 10 MS. GREER: January 15th.

11 THE COURT: All right. You have until  
12 February 14th. I'm sorry, the name of that case?

13 MS. GREER: Temple vs. Ameridose.

14 THE COURT: Do you have the docket number?

15 MS. GREER: You know what, give me one  
16 second, I do.

17 THE COURT: I keep having the sense all I'm  
18 doing, of course, is kicking multiple cans down the  
19 road.

01:53PM 20 MS. GREER: It's 1:13-cv-12696.

21 THE COURT: 12696, thank you.

22 MS. GREER: Temple vs. Ameridose.

23 THE COURT: All right. Anything else on  
24 item Number 1? Anything else on item Number 2?

25 Mr. Gottfried.

1 MR. GOTTFRIED: The only thing I want to  
2 add, your Honor, you gave ARL until December 23d to file  
3 a proof of claim. They did not do that, so at this  
4 point, they're not compliant with your mediation order.

5 THE COURT: All right. Is there any pending  
6 motion that asks me to do something in that regard?

7 MR. GOTTFRIED: Not that I'm aware of.

8 MS. PARKER: I believe that ARL has since  
9 filed a proof of claim or at least has indicated to us  
01:54PM 10 that they are doing that.

11 THE COURT: I'm sorry, you are?

12 MS. RAGOSTA: Kristen Ragosta from ARL.  
13 Your Honor, after our leave from the Court, we did have  
14 further discussion with the trustee himself, I believe  
15 through the mediator, counsel was on vacation, and he  
16 said that we could have until the end of -- till  
17 January 15th to file a proof of claim. We have since  
18 transmitted a draft to the mediator for the trustee's  
19 review, and we plan to submit a proof of claim tomorrow  
01:54PM 20 or Monday.

21 MR. GOTTFRIED: We'll look at that when and  
22 if it gets filed. I can tell you there are issues with  
23 the draft, I can see all sorts of reservations of  
24 rights, provisos and the like, so we'll see what  
25 ultimately gets filed. We'll certainly react to it when

1 we see it.

2 THE COURT: All right. Right now there's no  
3 motion pending before me of any kind, and we'll see how  
4 this plays out and take it up in due course.

5 MS. RAGOSTA: Thank you.

6 THE COURT: Mr. Sobol.

7 MR. SOBOL: Nothing else.

8 THE COURT: Item Number 3, proposed  
9 settlement. Is there anything else? Mr. Gottfried.

01:55PM 10 MR. GOTTFRIED: Sure, I'd be happy to give  
11 you a further report from the trustee's perspective,  
12 your Honor. As I think I indicated in December, the  
13 December status conference, the trustee and the parties  
14 certainly took to heart your admonition that it was time  
15 to either get this matter resolved or settled or to  
16 litigate it, and I reported significant progress in the  
17 December conference, and I'm sure the Court has seen in  
18 various filings and otherwise, the announcement of an  
19 agreement in principal to reach a settlement with the  
01:55PM 20 insurance company and the insider defendants that have  
21 been identified for an amount that's estimated to be in  
22 excess of \$100 million.

23 The trustee has continued to make progress  
24 towards finalizing those settlements. We've exchanged  
25 draft settlement documents with the insurers. We expect



1 to be exchanging drafts with the individual and  
2 affiliated defendants next week. It's the trustee's  
3 goal to file a motion with the bankruptcy court to have  
4 those settlement approved in the next 30 days or so, and  
5 his thought would be given a 20-day notice period that a  
6 hearing might be scheduled on that in the bankruptcy  
7 court 30 days or so after he files his motion.

8 He continues to negotiate with the insurer  
9 for another affiliated defendant and believes that  
01:56PM 10 substantial progress is being made towards the  
11 settlements.

12 THE COURT: All right.

13 MR. SOBOL: If I may, your Honor?

14 THE COURT: Yes.

15 MR. SOBOL: I think there are several things  
16 that are important for the Court to understand in terms  
17 of both the time frame and what we're doing with respect  
18 to that. The first is after those events occur, once a  
19 settlement is reduced to writing and presented to the  
01:57PM 20 bankrupt court, tentatively approved or whatever would  
21 be done in that context, of course, at that point won't  
22 be going into in effect because the notion behind it is  
23 that the SP becomes a part of a plan in the bankruptcy  
24 court, which obviously has to go through an additional  
25 process, voting, acceptance, potential appeal, so I just

1 want to make sure you understand how that all runs out.

2           There are two fundamental issues and due  
3 diligence that are being processed in terms of the  
4 settlement agreement. First, there has been a  
5 representation made regarding the assets of Barry and  
6 Lisa Cadden, Doug and Carla Conigliaro and Greg  
7 Conigliaro that needs to be confirmed prior to the  
8 settlement becoming final, and, with regard, the PSC is  
9 undertaking that in all dispatch.

01:58PM

10           Second, because as the Court knows, there  
11 has been no formal discovery with respect to any of  
12 these people or entities over the past year, there are  
13 representations that have been made, particularly  
14 regarding Doug Conigliaro that he had absolutely nothing  
15 whatsoever to do with the wrongdoing that gives rise to  
16 liability in this case.

17           Obviously, that's something that the PSC  
18 needs to make sure we undertake our due diligence with  
19 respect to before we can agree that goes forward. I've  
20 had some preliminary discussions with counsel so that we  
21 can undertake that due diligence, and we will do that as  
22 soon as we can.

01:58PM

23           I'd also like to be able in connection with  
24 that, your Honor, is indicate to you that I've requested  
25 that Rick Ellis, who's formally not on the PSC, but

1 who's been working with us daily on all issues, I've  
2 asked him to head up that bit of due diligence so that  
3 there can be somebody with an awful lot of experience,  
4 member of the Bar here to be able to do that, and he's  
5 agreed to do that.

6 So that would be the PSC's report with  
7 respect to that. We continue to try to work with the  
8 trustee and the creditors' committee to get this  
9 finalized, signed, sealed and delivered in the time  
01:59PM 10 frame that Mr. Gottfried has indicated.

11 THE COURT: All right. Does anyone want to  
12 be heard on settlement? All right. Master complaint  
13 against affiliated defendants and responsive pleadings.  
14 I think we've touched on some of this.

15 MS. PARKER: Yes, your Honor.

16 THE COURT: Ms. Parker.

17 MS. PARKER: Thank you, your Honor. The  
18 plaintiffs' steering committee moved this Court for an  
19 extension of the deadline to file a master complaint  
01:59PM 20 naming the affiliated defendants. Our basis for doing  
21 so is that we wanted to provide time for settlement  
22 agreement to be reduced to writing and for due diligence  
23 to be completed.

24 The Court granted that motion. The master  
25 complaint against affiliated defendants is now due

1 March 10th. We may or may not need to revisit that  
2 deadline, your Honor, but I think the most prudent  
3 course is to see how things play out in the next 30  
4 days.

5 THE COURT: To state the obvious, there's no  
6 point in people undergoing unnecessary work if we can  
7 avoid it.

8 Is there -- I'm sorry, is there anything  
9 else on item 4?

02:00PM 10 MS. PARKER: We've already addressed the  
11 motion by Premier, your Honor, so I think unless  
12 Mr. Blumberg has anything further.

13 MR. BLUMBERG: Nothing further.

14 THE COURT: All right. Number 5, the PSC  
15 motion to partially lift the discovery stay against the  
16 affiliated defendants. I saw that there were a handful  
17 of responses to that.

18 MR. SOBOL: If I may, your Honor. First,  
19 let me put the motion in context so it's not  
02:01PM 20 misunderstood. Over the past, whatever, six or eight  
21 months or so, Mr. Fern on behalf of NECC, trustee, has  
22 been undertaking informal discovery producing  
23 information to the PSC.

24 The fact that we're seeking this motion is  
25 not in any way critical of all of his efforts. They

1 have been responsive, they continue to be responsive to  
2 us in the mutually-agreed ad hoc way in which that has  
3 occurred and with the limitations that the trustee has  
4 understandably placed on our ability, what we can do  
5 with the information or not.

6 So nothing that I'm saying is in any way  
7 intended to undermine what it is they've done in that  
8 regard. The motion is a simple one. The motion simply  
9 seeks to have you lift the stay as to the affiliated  
10 entities and individuals. By the way, it did not  
11 include NECC because I was personally under a  
12 misimpression that I thought that I needed to go to the  
13 bankruptcy court to have the bankruptcy court automatic  
14 stay lifted for these purposes.

15 Research in the interim educates me better  
16 that I actually did not have to go do that, and so I've  
17 sent a letter to Mr. Moore asking that he provide, allow  
18 us to have the same relief here as I've asked the other  
19 parties that's not ripe.

20 The motion simply is a request to have you  
21 lift the stay. If you lift the stay, that does not mean  
22 that anybody is required to produce any documents  
23 tomorrow or any witnesses tomorrow or anything else like  
24 that. It's, instead, it would permit us to be able to  
25 serve Rule 34 requests, negotiate responses, get

1 documents and deal with things in the ordinary course.

2 Why do we want to do it now? Well, it's  
3 pretty simple. It's been a year, and it turns out that  
4 there is litigation we're going to need to move forward  
5 with respect to, not with respect to hopefully the  
6 settling parties, which we've just spent quite a bit of  
7 time identifying them all, but there are quite a few  
8 non-settling parties, and the PSC has found itself over  
9 time more and more in an awkward position in dealing  
02:03PM 10 with defense counsel who look to us to say, well, we're  
11 not entitled to any discovery from NECC or Ameridose,  
12 let's move forward with this case, so that becomes a  
13 problem. And, also, there are things that we need to  
14 now formally acquire so that we can formally use it with  
15 respect to other parties, that kind of thing.

16 Obviously, before any of these issues come  
17 before you, the members of this Bar have been speaking  
18 with one another trying to see if they can resolve  
19 things, and we have spoken, and we have tried to resolve  
02:03PM 20 it. This was one of those ones where we had to agree to  
21 disagree.

22 I think that my Brother's opposition to this  
23 is best articulated as, "We don't want this to mock up  
24 the settlement discussions." My best answer to that is  
25 I don't have any intention on mucking up the settlement

1 discussions. If Judge Saylor lifts the stay, it was  
2 going to take my guys at least a week and a half to  
3 issue a Rule 34 request, you're going to have a month to  
4 respond to that, we'll probably have to negotiate a  
5 response to that, so I don't have a prayer of getting  
6 any official documents from you until the Ides of March,  
7 in any event. That's our position with respect to it.

8 THE COURT: Let me give you -- maybe this  
9 is -- it is a tentative response. As a general  
02:04PM 10 proposition, I agree with you. We're going to have to  
11 do this eventually anyway unless every single defendant  
12 settles, and it's been a while, and we ought to get  
13 going on it.

14 Having said that, I'm concerned in the very  
15 short term about burdening counsel who I do want to  
16 focus principally on the settlement agreement, and,  
17 Number 2, I think we need, and this probably applies to  
18 all remaining defendants or anyone whom discovery is  
19 going to be sought, we need to have a plan in place, how  
02:05PM 20 are we going to deal with ESI.

21 There are a lot of issues that have not yet  
22 been totally resolved, and so I think what -- well, let  
23 me hear from -- who opposed it, Mr. Gottfried?

24 MR. SOBOL: I think if they say anything,  
25 they're probably doing themselves worse rather than

1 better.

2 MR. GOTTFRIED: Let me say that I agree with  
3 your Honor completely.

4 [Laughter]

5 THE COURT: Always the right thing to say.

6 MR. GOTTFRIED: I'm aware of that.

7 THE COURT: It's like your wife, "You look  
8 beautiful, honey," the same idea.

9 MR. GOTTFRIED: We agree with you.

02:05PM 10 Certainly in the near term, I would say at least the  
11 next 60 days, the stay should absolutely be continued  
12 given the time frame that I laid out that Mr. Sobol  
13 agrees with, it seems that's the bare minimum.

14 In addition to some of the concerns that you  
15 raised, your Honor, one of the elements of value in this  
16 settlement is the value of Ameridose, and if they are  
17 forced to deal with sort of broad brush document  
18 requests and processing ESI, before even master  
19 complaints are filed and they even know what the claim  
02:06PM 20 is against them, it just means that we're taking money  
21 out of the hands of the victims, and so we strongly  
22 oppose at this point the stay being lifted.

23 We think the stay served the salutary effect  
24 that the Court thought it would in promoting settlement.  
25 I note that this motion was first filed on October 28th



1 when the landscape with respect to settlement was far  
2 different and uncertain and that it's changed materially  
3 in a very positive way, I might add, and so, you know,  
4 for those reasons, and, most particularly, your reasons,  
5 we would urge that this be denied right now and then  
6 revisited after the settlement has been achieved and the  
7 landscape is clearer, we can come up with a  
8 cost-effective way to preserve the assets of the estate  
9 and protect the creditors.

02:07PM 10 MR. MOLTON: Your Honor, if I could make a  
11 statement?

12 THE COURT: Yes.

13 MR. MOLTON: We filed a joinder. The  
14 committee is comprised, as your Honor knows, of three  
15 tort claimants and one trade creditor, and so the  
16 committee really understands what Mr. Sobol said and  
17 understands the PSC used the committee after discussion  
18 voted to join in the opposition from the trustee and for  
19 the reasons that Mr. Gottfried said.

02:07PM 20 One of the things I do want to reiterate,  
21 and that joinder was made with, you know, no small  
22 matter of thought, and that should be stated. We really  
23 need to finish the settlement. I think Mr. Gottfried is  
24 correct that we're looking at 30 days. We've got lots  
25 of moving parts. As your Honor has seen, nothing in

1 this case is easy. You've got the creditors' committee,  
2 who worked for very diligently with the PSC and the  
3 trustee to get the settlement done with the affiliated  
4 defendants. Each of those parties is going to have to  
5 stay on the operative agreement, the settlement  
6 agreement. It's not going to be an easy agreement.  
7 They're mutually linked with the insurance agreements,  
8 insurance settlements, and I'll get to that in a minute.

02:08PM 9 Accordingly, 30 days is an appropriate  
10 amount of time to document it and get it executed and  
11 then off to Judge Boroff for initial approval. I do  
12 want to also note, your Honor, that we really need to  
13 protect this settlement agreement and make sure that  
14 nothing gets in its way. It is the first milestone on  
15 resolving this case.

16 As I mentioned earlier, it's had the effect  
17 of having our phone call, our telephones ringing with  
18 other interested defendants considering the mediation  
19 program. I do note that the views from those people who  
02:09PM 20 aren't always here, the plaintiffs and their attorneys  
21 who are out there and have cases has been, we  
22 understand, uniformly positive for the settlement, and  
23 to some extent, there's writings out there indicating  
24 that people were surprised that we were able to piece  
25 together such a significant compensation fund, and

1 that's only at the initial stage.

2 I do want to note, your Honor, and I  
3 understand what Mr. Sobol said is that, you know,  
4 nothing is going to be produced yet, but, however, we  
5 will, even if his informal schedule is effectuated, that  
6 means the defendants have to answer written answers to  
7 discovery requests before the settlement is approved,  
8 these defendants still, as your Honor knows, face  
9 criminal jeopardy.

02:09PM

10 To the extent that they decide to invoke  
11 Fifth Amendment rights, to the extent that that's  
12 appropriate, we're uncertain how that may impact the  
13 interlinking of these agreements with the insurer  
14 agreements, and certainly the trustee conducted very  
15 sensitive and detailed discussions with the insurers in  
16 the face of the facts of this case and significant  
17 challenges and was able to arrive at very good  
18 agreements, I think for the benefit of all the parties  
19 in this case, so we believe from the creditors'

02:10PM

20 committee point of view that it's really important that  
21 nothing get in the way of this settlement, and so let's  
22 execute it and get it approved by Judge Boroff.

23 MR. GOTTFRIED: One thing I want to add,  
24 with your permission.

25 THE COURT: Yes, Mr. Gottfried.

1 MR. GOTTFRIED: As Mr. Sobol said at the  
2 beginning of his remarks, the trustee has provided  
3 informal discovery to the PSC. We have and are ongoing  
4 providing informal discovery to the parties who are  
5 participating in mediation. I dare say, there's been no  
6 request that's been made to the trustee for informal  
7 discovery that hasn't been addressed promptly and  
8 appropriate productions made, and certainly we would  
9 continue to do that even if we were doing this process,  
10 if that helps facilitate mediations or if there's a  
11 need, and we've done that, and I believe Mr. Fern has  
12 the details, he's been running that, but I think it's  
13 40,000 pages of documents have been produced.

02:11PM

14 I am specifically aware, for example, of the  
15 due diligence that Mr. Sobol raised, he asked us to  
16 conduct a review of the materials, we did an extensive  
17 review, we provided a report with respect to that, so  
18 there's been no -- there's no stonewalling here, but  
19 that's the cost effective and efficient way of dealing  
20 with it at this process, the way we've been doing it, we  
21 think.

02:11PM

22 THE COURT: All right. Here's what I'm  
23 going to do. I'm going to not lift the stay at least  
24 until the next conference on February 6th. When I do  
25 lift the stay, and, again, I share some of Mr. Sobol's

1 concerns, it's not going to start with the issuance of  
2 Rule 34 requests, it's going to start with a meet and  
3 confer, and we're going to have a plan, and we're going  
4 to talk about what makes sense going forward, and  
5 depending on the timing of a variety of things, I may  
6 direct that that happen some time after February 6th. I  
7 may wait, I'm not sure what I'm going to do, but the  
8 parties ought to start at least thinking about that,  
9 maybe even having some informal discussions just to  
10 think about how this is going to happen, when it  
11 happens, what makes sense.

02:12PM

12 Obviously, the landscape may change between  
13 now and then, but in the short term, I'm going to leave  
14 matters where they are. Mr. Sobol's concern is duly  
15 noted, shared by the Court. We'll take it a month at a  
16 time, so to speak.

17 MR. GOTTFRIED: Thank you, your Honor.

18 MR. SOBOL: If anybody says, I'll say the  
19 Judge shot me down.

02:12PM

20 THE COURT: That happens. There's perhaps a  
21 vaguely related question, there is a motion, I think by  
22 Liberty, that's seeking an order of disclosure  
23 permitting access to the repository of documents.  
24 There's a concern about the payment of the \$3,000  
25 upfront fee. That motion is not yet ripe. Is counsel

1 for Liberty present? No.

2 MS. COCHRAN: Your Honor, Steffani Cochran  
3 is present --

4 THE COURT: Yes.

5 MS. COCHRAN: -- among the PSC for Liberty.  
6 I'm stepping in for Marc Lipton, who had a family  
7 emergency, and my understanding is we're speaking with  
8 the attorney for Liberty, and it's being worked on.  
9 There's some stuff that's supposed to go back and forth  
10 over the next week.

02:13PM

11 THE COURT: All right. Again, that motion  
12 is not yet ripe. I'll leave that where it is for the  
13 time being.

14 MS. COCHRAN: Thanks.

15 THE COURT: All right. Anything else on  
16 item Number 5? Just to be clear, the motion that  
17 remains pending is the motion from last October,  
18 Number 534, the PSC's motion to lift the discovery stay.

19 MR. SOBOL: So, technically are you putting  
20 that over or denying it without prejudice?

02:14PM

21 THE COURT: I'm just putting it over, I'm  
22 not resolving it. All right. Number 6, subpoenas and  
23 objections?

24 MR. FENNELL: Your Honor, this is  
25 Patrick Fennell for the plaintiffs' steering committee.

1 On November 13 last year, Judge Boal entered a discovery  
2 order requiring all subpoena recipients to produce  
3 documents pursuant to the PSC subpoena if they have a  
4 patient who has sued them or a patient who has a case  
5 pending in the MDL or given notice of a claim against a  
6 clinic in the NECC litigation.

7 So far, 21 clinics have deposited documents  
8 into the PSC repository at U.S. Legal Support. That  
9 includes approximately 1300 documents and approximately  
10 7,000 pages. There are 15, approximately 15 clinics  
11 that have taken the position that they do not have any  
12 such patients and are not required to produce any  
13 documents except for a limited request, which Judge Boal  
14 ruled applied to everybody.

15 Interestingly, some of the clinics who have  
16 received notice of a claim, a standard letter saying we  
17 represent the following individuals who have claims  
18 against your healthcare provider in the NECC litigation,  
19 some of the clinics who have received those notices  
20 still feel that they don't have to respond to the  
21 subpoena because the notice has not been properly given  
22 under certain aspects of state law.

23 The PSC's position is that Judge Boal used  
24 the term "notice of a claim" in its most commonly  
25 understood form and didn't say anything about whether

1 that notice has to be done in compliance with the  
2 particular requirements of one state or another.

3 So the PSC is conducting meet and confers  
4 and will be also preparing to file a motion to compel  
5 with respect to one such clinic here very shortly.

6 THE COURT: All right. Anyone else want to  
7 be heard on this topic? That's item Number 6.

8 Item Number 7, matters referred to by  
9 Judge Boal. Before we get into that, there are a couple  
02:16PM 10 of dangling issues raised by the St. Thomas entities.  
11 Back at the end of November, St. Thomas had as part of  
12 their -- a number of motions that it filed to  
13 reconsider, my MDL order and so forth, there was a  
14 motion to amend the protective order.

15 I have finally resolved that. I had hoped  
16 to have it filed before today so that you could see it.  
17 I'm technically granting it in part and denying it in  
18 part. I'm going to make some minor tweaks to that  
19 protective order, but most of the issues raised by  
02:17PM 20 St. Thomas, I think, are either covered in the order or  
21 I think it's not necessary to amend the order to  
22 address. That we'll get out shortly, hopefully even  
23 today.

24 Part of what St. Thomas raised was also a  
25 motion to stay discovery pending a discovery plan. I do



1 want to take this up at some point today. What I said  
2 about having a discovery plan for the affiliated  
3 defendants obviously applies to the unaffiliated  
4 defendants as well, some degree of planning and  
5 coordination needs to be done here. You know, even in a  
6 simple case, we have a scheduling conference where the  
7 parties have to meet and confer. That needs to be  
8 discussed as well.

02:18PM 9 We don't necessarily need to resolve it  
10 today, but that issue does need to be resolved, and with  
11 that as an introduction, who's going to take the lead on  
12 item 7, Ms. Parker?

13 MS. PARKER: Actually Ms. Dougherty I  
14 believe and Mr. Zamora will be addressing that.

15 THE COURT: Ms. Dougherty.

16 MS. DOUGHERTY: Thank you, your Honor.  
17 Travellers' motion to quash at this point in time is  
18 being negotiated by the PSC with Travellers. Travellers  
19 is the insurer for Liberty party in the mediation. At  
02:19PM 20 this point, some compromises have been made and reached.

21 THE COURT: I thought Liberty said it had no  
22 insurance? Well, whatever. Go ahead.

23 MS. DOUGHERTY: Interesting, yes, and so at  
24 this point, the plaintiffs' steering committee sought an  
25 extension of time to respond, and your Honor granted

1 that extension of time, and hopefully we'll be able to  
2 resolve these issues with Travellers without having to  
3 seek further Court intervention, but if we are unable to  
4 resolve it, that's been referred to Judge Boal, and we  
5 anticipate that there may be argument on that on  
6 February 6th.

02:20PM 7 THE COURT: What is the status before  
8 Judge Boal of dealing with the fact sheets, releases,  
9 protective order, that process? Is there a hearing set  
10 for that as well?

11 MR. ZAMORA: Judge, there is. This is  
12 Mark Zamora for the plaintiffs' steering committee.  
13 It's set for February 6th, and, Judge, Ms. Greer and I  
14 had a cordial conversation before today's hearing. I  
15 think if you looked at it in terms of complexity from  
16 least to most, perhaps contentious from least to most,  
17 we are mindful of a final meet and confer that's to be  
18 completed on the 17th, so I think if you look at the  
19 order, the first issue is going to be best protocol, and  
02:20PM 20 she may disagree, I think we can both find agreement on  
21 probably 90 percent of the nuts and bolts procedure.

22 A few of the other items I don't think are  
23 road blocks, and I don't think Judge Boal would want to  
24 be troubled with some of those issues, and so I think  
25 we'll progress there and may not even have anything to

1 discuss.

2 The second component would be the medical  
3 releases. There still is some language that we are  
4 discussing, but I am hopeful, I think, that in substance  
5 that we'll have agreement, and if there's a real issue  
6 that's significant, that will be the only thing that  
7 Judge Boal considers.

8 The next item, I think we have made  
9 substantial progress this week has been the fact sheet.

02:21PM 10 I'm mindful of your comments at the last hearing.

11 THE COURT: As you can tell, I took  
12 something of a Goldilocks approach, which is I wanted  
13 this to be not too detailed and not too simple.

14 MR. ZAMORA: I think we're getting to right  
15 about to the middle, and so there are ongoing disputes  
16 that mainly relate to how far back certain requests go.  
17 In truth, we handed her material today, and so I am  
18 hopeful that more likely than not Judge Boal will be  
19 handling that, but those are the most substantial  
02:21PM 20 issues. I think we probably lean a little more to the  
21 detail as opposed to where we were.

22 With respect to the ESI, I think we're  
23 mindful that that's going to guide some other entities  
24 as well. There's still some more to be done, but I'm  
25 pretty confident that we're going to get there. To that

1 end, we're going to have a call, we'll invite all  
2 participants who are parties to the litigation on the  
3 15th, which is currently set for 4:30, which is 30  
4 minutes after the proof of claim forms are going to be  
5 put to bed. If folks aren't blurry-eyed, we'll have the  
6 call, and I think what Ms. Parker's view is we'll  
7 circulate a number on the 15th, and Ms. Greer and I and  
8 others will be involved in the discussion of the nuts  
9 and bottles of those issues.

02:22PM 10 THE COURT: All right. Anything else on  
11 item 7?

12 (No response)

13 THE COURT: All right. Item 8.

14 MR. SOBOL: So on item 8, your Honor, and  
15 you flagged it at least twice already today, the  
16 question is what's going to be the plan from here on in.  
17 The long and short of it, what I would like to suggest,  
18 your Honor, is that before the next status conference --  
19 well, should I first put in context what will we be  
02:22PM 20 talking about?

21 There's still going to be litigation with  
22 St. Thomas, we don't know with Virginia, and then we've  
23 got, whatever, a couple of dozen other clinics that are  
24 out there. Obviously, we can't put together a plan  
25 regarding all of that all at once. We've got to start

1     picking.   Where are we going to start?

2                 Well, it seems to me we're going to start  
3     from the plaintiffs' steering committee point of view,  
4     we'll start with St. Thomas, and what I'd like us to do  
5     is to meet and confer with St. Thomas.   If we can agree  
6     on a plan, we'll submit an agreed plan; if we can't  
7     agree on a plan, we'll submit counterproposals and hash  
8     it out at the next status conference.

9                 In that context, too, it's not that the  
02:23PM 10     plaintiffs' steering committee is looking exclusively at  
11     St. Thomas, but we have to do the census that we'll do  
12     next week on a proposed, some lawyers outside the PSC,  
13     it's what they think makes sense in terms of other  
14     litigation activities we engage in, but from the  
15     plaintiffs' steering committee point of view, we'd like  
16     to be at the next status conference either talking about  
17     an agreed schedule or disagreement on a schedule to tee  
18     up a trial for St. Thomas.

19                 THE COURT:   All right.   This raises a  
02:23PM 20     question.   The Roanoke Gentry, Locke plaintiffs in their  
21     papers talking about the transfer of cases raise the  
22     issue of, and I'm paraphrasing here, but the thrust of  
23     it was that a case arising in southwest Virginia ought  
24     to be tried to a southwest Virginia and not up here in  
25     far away, cold Boston.

1           My assumption from day one has been that  
2   when cases are ready for trial, they get spun out to the  
3   individual home districts where they first arose.  
4   Again, this seems to me putting aside the so-called  
5   national defendants that if what the case is is against  
6   a pain clinic and a doctor, that probably those cases  
7   ought to be spun out for trial to where they originated.

8           I have not done any sophisticated thinking  
9   on that topic, and it obviously depends on what the  
02:25PM 10   cases look like and so on, but that's going to affect  
11   what cases are selected as bellwethers. All this by way  
12   of saying, this is not a typical case where, you know,  
13   you have pharmaceutical product X, and the question is  
14   did it cause injury Y, and was appropriate testing done  
15   and so forth.

16           I think that's not going to be the central  
17   issue in these cases, so it's not clear to me what this  
18   is going to look like, where these cases are going to be  
19   tried, and what the stage in the process we need to  
02:25PM 20   begin talking about that, but certainly it was too soon  
21   to be thinking about it a month ago, at least when we  
22   were issuing orders, and it's one more thing. I think  
23   we ought to formulate a step at a time. It depends very  
24   much what these cases look like, who the defendants are  
25   and what happens from there.

1 MR. SOBOL: Right. And how many defendants  
2 there are, whether or not you've got a national  
3 defendant or just a local defendant.

4 THE COURT: Right. Presence or absence of a  
5 national defendant may make a difference.

6 MR. SOBOL: And our proposal will consider  
7 that. I don't think necessarily people have to land on  
8 a final decision on that issue on February 6th or  
9 whatever the next status conference is, and we'll also  
02:26PM 10 look into whether or not it makes sense for this Court  
11 to sit on a trial down in the middle of Tennessee or  
12 not.

13 THE COURT: Well, I'd be amenable to  
14 anyplace warmer than here, which excludes then the  
15 midwest at this point in time. I think somewhere we  
16 have lawyers from Traverse City, Michigan, and my mother  
17 lives in Traverse City, Michigan, and it was 10, 15  
18 below zero for long stretches. She didn't even go  
19 outside to the mailbox.

02:26PM 20 All right. Anything else on item 8? Yes,  
21 Ms. Greer.

22 MS. GREER: It's not clear where the  
23 deposition protocol and ESI and discovery plans stand at  
24 this point. There hasn't been an order on that  
25 referring it to Judge Boal, and so we just would ask for

1 some clarification as to whether you're going to be  
2 handling that because we're hearing a lot about meet and  
3 confer. We are working on protocols, we are exchanging  
4 them, but they're kind of in no man's land right now.

5 THE COURT: Why don't I do this. Certainly  
6 as to the St. Thomas entities that you represent, I'm  
7 going to direct the parties to meet and confer on the  
8 discovery plan. I may spin some of this off to  
9 Magistrate Judge Boal, I may keep it, I don't know, but  
02:27PM 10 certainly it makes sense for you all to get together and  
11 talk about what you think makes sense to see if you can  
12 agree, and we'll handle it that way. Okay.

13 MS. GREER: Okay.

14 THE COURT: Does that work?

15 MS. GREER: Does that go for the deposition  
16 protocol and my protocol are kind of --

17 THE COURT: I was thinking of discovery  
18 protocol, which, in other words, discovery from  
19 plaintiffs are going to be dealt with in the short term,  
02:27PM 20 the fact sheets and so forth. Discovery from your  
21 client's perspective, I want you to meet and confer and  
22 talk about a possible plan. I don't know what the ESI  
23 issues are, I don't know what the volume of documents  
24 are. I don't have any idea what the issues are, and  
25 step 1 is for you to confer with one another, and as



1 Mr. Sobol suggested, if you can agree on a plan, that's  
2 great, if you can't, let's tee it up, I may decide it, I  
3 may refer it to Magistrate Judge Boal, and we'll go from  
4 there.

5 MS. GREER: Our thinking, right or wrong,  
6 was that the discovery plan we talked about in sequence,  
7 you had talked about having written discovery first and  
8 then depositions, et cetera.

9 THE COURT: That's usually the way it works.

02:28PM

10 MS. GREER: Usually in my experience, and  
11 then separate from that would be an ESI protocol that  
12 just deals with the ESI issue which would be cumbersome  
13 documents and just deals with the separate protocol, and  
14 we have been working on drafts of those, so I just  
15 wanted to make sure that you understood how this is  
16 playing out kind of in the real world, and we're okay  
17 with that.

18 THE COURT: All right. That's fine. Again,  
19 from my perspective, what I want is I want there to be  
20 some degree of planning, I want it to be fair, I want  
21 this to be as organized as it can be under the  
22 circumstances. Obviously, I'm doing a lot of this kind  
23 of ad hoc, but as in any case before you take discovery  
24 from the other side, there needs to be some kind of plan  
25 in place or order that directs and sets deadlines and so

02:29PM

1 on, so why don't we get working on that.

2 If your client is in the cross-hairs and it  
3 looks like it is, you need to meet and confer with the  
4 plaintiffs' counsel and try to come up with either a  
5 joint plan or a pair of proposals that I can choose  
6 between.

7 MS. GREER: Will do.

8 THE COURT: If you want intelligent  
9 commentary on any ESI protocol, you may have to find  
02:29PM 10 another Judge. I'm not sure I'm the right person for  
11 that.

12 Item 9, notice of instructions for accessing  
13 repository.

14 MS. PARKER: Yes, your Honor, the  
15 plaintiffs' steering committee sent a letter to all  
16 defendants in the MDL, both unaffiliated and affiliated,  
17 sharing information about the document repositories and  
18 also providing some instructions for how access to those  
19 repositories can be gained. Out of an abundance of  
02:30PM 20 caution, we also took the liberty of ECFing a notice of  
21 those instructions to make sure that every participant  
22 in the MDL understood how those repositories could be  
23 accessed.

24 THE COURT: Okay. Anything else on that?

25 (No response)

1 THE COURT: Item 10.

2 MR. GAYNOR: Excuse me, your Honor, just for  
3 clarification purposes, on behalf of the individuals,  
4 and I'm not pressing this at this point in time, but we  
5 were denied access presumably because of the stay  
6 issues. I just want to make that clear.

7 THE COURT: Denied access to?

8 MR. GAYNOR: To the repository.

9 THE COURT: Are you seeking relief?

02:31PM

10 MR. GAYNOR: No, I think we could put that  
11 off for now, I just want to clarify the record that we  
12 were denied specifically that access.

13 THE COURT: All right.

14 MR. O'HARA: I think it's important to note  
15 that we're not pressing that issue at this point in  
16 time. I think our position right now is that the global  
17 issues of resolution ought to be dealt with and  
18 discovery issues set aside. I think we have a  
19 fundamental agreement with your Honor at least in  
20 principal through this 30-day period that's coming up to  
21 focus on settlement of the case, and we'll address  
22 future issues on discovery issues if there are any to be  
23 had at a later date.

02:31PM

24 THE COURT: All right. Item 10, central  
25 enforcement of subpoenas. PSC has filed a motion. I

1 don't know. Does anyone expect to oppose the motion?

2 All right. Ms. Parker.

3 MS. PARKER: Thank you, your Honor. Earlier  
4 in this litigation, a motion was submitted to your Honor  
5 asking for you to decide in advance that you would  
6 centrally enforce subpoenas rather than have subpoenas  
7 be enforced in home state jurisdictions.

8 What we have asked the Court now to do is to  
9 extend that ruling to apply to all subpoenas that are  
02:32PM 10 issued out of the MDL, whether they're issued by  
11 plaintiffs' steering committee or any other party and to  
12 give clarity on that issue in advance that it would  
13 apply to all subpoenas so that subpoena recipients going  
14 forward as we begin additional discovery activities have  
15 an understanding of how to best respond to those.

16 THE COURT: All right. I would again expect  
17 to grant that order. It certainly makes sense and is a  
18 logical continuation of my prior order.

19 All right. Item 11, order on motions to  
02:33PM 20 dismiss, amend and summary judgment. Ms. Parker.

21 MS. PARKER: Yes, your Honor. I believe  
22 there is one motion to dismiss pending in civil action  
23 number that your Honor did not address previously. The  
24 Court had denied without leave, I'm sorry, without  
25 prejudice certain motions to dismiss that were pending

1 in individual dockets.

2 THE COURT: Yes.

3 MS. PARKER: I believe that we found one  
4 that your Honor may have missed, the McDowell case, and  
5 wanted to bring that to your attention.

6 THE COURT: All right. I think what had  
7 happened, I'm reading from my order here, which what I  
8 said was that there had been a motion to dismiss the  
9 complaint in McDowell but the motion had been filed on  
10 the docket for Erkan and that McDowell had not filed an  
11 amended complaint, directed Alaunus to refile the motion  
12 to dismiss on the docket for McDowell, and the Erkan  
13 motion should remain or the motion should remain pending  
14 and to be filed on the right docket, so I haven't  
15 followed up on that. Has that happened?

16 MS. PARKER: I don't know the answer to  
17 that, your Honor, I apologize.

18 THE COURT: All right. I will take a look  
19 at that. Of course, when I drafted this order, it had  
20 slipped my mind that Alaunus was an affiliated  
21 defendant, which I suppose is another issue. My clerk  
22 passed me a note saying nothing has been filed in  
23 McDowell. Again, if this is Alaunus, is this issue  
24 going to be mooted by the settlement? I'd like to clear  
25 my docket.

02:33PM

02:34PM

1 MR. RABINOVITZ: Your Honor, this is  
2 Dan Rabinovitz, your Honor. I was asked to inform the  
3 Court that the attorney who represents Alaunus,  
4 Franklin Levy, had to go out of the country on business  
5 that couldn't be rescheduled, is not present.

6 THE COURT: Okay.

7 MR. RABINOVITZ: He intends to abide by your  
8 order and refile but hasn't done so yet.

9 THE COURT: All right. I'm just going to  
02:35PM 10 put that on hold for the time being. All right. 11B is  
11 the trustee's renewed and supplemental motion to  
12 transfer. This has been opposed by the Gentry, Locke  
13 plaintiffs, and the PSC has asked to have until  
14 January 17th to respond, which I think is fair. I'll  
15 grant that, which is motion Number 760 on the docket,  
16 and I think this is a matter that I should take up at  
17 the February 6th conference and hear argument on it as  
18 well.

19 Is there someone present for the Gentry,  
02:36PM 20 Locke firm?

21 MR. GIBSON: Yes, your Honor, this is  
22 Dave Gibson from Roanke.

23 THE COURT: I do want to hear argument. I  
24 won't necessarily require you to come up from Virginia  
25 for it. It's up to you, but I do want to hear the issue

1 on February 6th.

2 MR. GIBSON: I think that we'll be available  
3 to be in Boston on that day.

4 THE COURT: All right. Is there anything  
5 else on that? I think the creditors' committee also  
6 wanted to file until January 17th. I'm sorry, what was  
7 the motion, Mr. Molton?

8 MR. MOLTON: Your Honor, I think we filed  
9 our joinder on Monday, the 6th, so we're not part of  
10 that motion to extend time.

02:36PM

11 THE COURT: Okay. All right. Anything else  
12 on that issue?

13 (No response)

14 THE COURT: All right. Item 12, status of  
15 bankruptcy proceedings.

16 MR. GOTTFRIED: Yes, your Honor. Here's a  
17 brief report on the status of the bankruptcy. Again, I  
18 think you are aware January 15th is the bar date. The  
19 trustee has been busy dealing with proof of claims that  
20 have been filed and inquiries from various creditors  
21 regarding that process, and, you know, like I said, that  
22 bar date is January 15th, is coming very shortly.

02:37PM

23 Other than dealing with bar date issues and  
24 obviously the settlement, the trustee continues to  
25 collect accounts receivable, continues to process the

1 product recall, is involved in attempting to resolve  
2 some tax and regulatory issues and generally continues  
3 to administer the estate, but the big items obviously  
4 are the settlement, hopefully the motion to confirm and  
5 accept the settlement and the proof of claim deadline.

6 THE COURT: What percentage of the fund is  
7 going to come from accounts receivable at this point,  
8 Mr. Gottfried?

9 MR. GOTTFRIED: Probably de minimis,  
02:38PM 10 hopefully the fund gets larger.

11 THE COURT: Status of appeals?

12 MR. MOLTON: Your Honor, I'm going to take  
13 that information with the transfer motion. David Molton  
14 for the creditors' committee. But before I do so, I  
15 want to come back to the pending supplemental motion. I  
16 do know that there were material papers filed last  
17 night, and it may be that your Honor's question to me  
18 regarding our initial response peaked this. It may be  
19 that the committee and the trustee will want to file  
02:38PM 20 reply papers to that, and so I know that that wasn't  
21 discussed, and we would, I would ask and with  
22 Mr. Gottfried here with me to be able to do so.

23 THE COURT: Yes, that's fine. Why don't I,  
24 in order to make sure I have a chance to read them, why  
25 don't I direct that any reply papers, let's see, well,



1 the Roanoke Gentry, Locke plaintiffs have already filed  
2 their response. That was on the 9th. Why don't I give  
3 you until January 21st, which is the day after Martin  
4 Luther King Day to file any reply memorandum.

5 MR. GOTTFRIED: Yes. The PSC is filing it  
6 the 21st.

7 THE COURT: Oh, that's right. I'll give you  
8 until the 27th.

9 MR. GOTTFRIED: Thank you.

02:39PM

10 MR. MOLTON: Judge, with respect to the  
11 appeal to the First Circuit from your Honor's transfer  
12 decision and order of this summer, no briefing schedule,  
13 as I understand it, has yet been set by the  
14 First Circuit.

15 The First Circuit though did come down with  
16 an order on December 10th, 2013, in which it granted the  
17 creditors' committee intervention rights on that appeal,  
18 and in so doing actually asked all the parties in  
19 connection with the appeal to address four questions  
20 dealing with its appellate jurisdiction, and without  
21 going through these questions basically, the  
22 First Circuit was interested whether it has appellate  
23 jurisdiction to hear an appeal from your Honor's  
24 transfer order under the final order rule or its  
25 exceptions or pursuant to Section 1334 and its

02:40PM

1 provision, so the First Circuit wants the parties to  
2 deal with their appellate jurisdiction and considers  
3 that which we think to be an important item.

4 THE COURT: All right. Anything else on 12  
5 or 13?

6 (No response)

7 THE COURT: All right. 14, PSC to file  
8 common benefit motion.

9 MR. SOBOL: I'll handle that, your Honor.

02:41PM 10 This is my least favorite topic whenever I have to deal  
11 with any issues in my practice. As you recall, your  
12 Honor, you entered an order last year, I think in April,  
13 regarding the need for lawyers to be keeping time,  
14 submitting their time, and then what the second step of  
15 that process that we need to do is to have an order  
16 entered that would segregate some amount of percentage,  
17 if you will, of funds. It doesn't mean that anybody is  
18 entitled to anything, it doesn't mean anybody has earned  
19 anything. It simply segregates a certain amount of  
02:41PM 20 money available for later on down the road to be dealt  
21 with.

22 The PSC will file a motion next week so it's  
23 ripe to be heard at the next status conference. I think  
24 it's important to point out that there have been quite a  
25 few, as you can see around you, there are quite a few

1 professionals that are involved in this matter, and it  
2 remains a very significant challenge trying to make sure  
3 that the limited funds become available here are not  
4 unduly encroached upon by the professional fees that  
5 will be taxed here, and I say that because the purpose  
6 from my perspective personally, the purpose of filing  
7 the common benefit order now is less trying to figure  
8 out a way to get a big chunk of any portion but rather  
9 making very clear that people's expectations should be  
10 quite modest, thank you very much, quite modest.

02:42PM

11 I'd also say that --

12 THE COURT: I assume you mean the lawyers --

13 MR. SOBOL: The lawyers.

14 THE COURT: -- not the plaintiffs.

15 MR. SOBOL: Not the victims, the victims, we  
16 should be maximizing the amount we possibly can for the  
17 victims. Put this in your mind, your Honor, for  
18 instance, if there's a settlement that's proposed out  
19 there that's \$400 million, all right, the question will  
20 be how much goes for -- and I'm not saying that any of  
21 these services weren't provided, they weren't provided  
22 very well, but the challenge that you and Judge Boroff  
23 will have in terms of supervising it is that you've got  
24 understandable fees, requests coming from the trustee,  
25 trustee's counsel, trustee's financial advisors, from

02:42PM

1 the lawyers for the creditors' committee, from members  
2 of the PSC, from other lawyers who have been providing  
3 common benefit services, and there's also out there the  
4 issue as to how much of the recovery that individuals  
5 receive has to go to their individual lawyers, too, and  
6 we are in a situation where the net-net that goes to  
7 people is not anywhere near what it is that it looks  
8 like at the beginning.

9 So I'm filing for a common benefit order  
02:43PM 10 next week, a motion next week. It's in the vain that  
11 I've indicated to you, however, and I would also  
12 indicate to your Honor that while there's been quite a  
13 lot of excellent volunteerism by a lot of lawyers in  
14 this case, particularly on the plaintiffs' side, that is  
15 vital for those people to provide me with their time  
16 sheets and expense records and their documentation that  
17 the work was requested and is being provided in  
18 accordance with your prior order.

19 I also recognize, your Honor, that I can't  
02:44PM 20 get on my high horse on this by indicating that I and my  
21 firm have to make sure that we, more than any other  
22 party, ask for compensation that is the most modest  
23 because we can't be making these kind of demands on  
24 others.

25 THE COURT: All right. Modest expectations

1 will be the watch word going forward.

2 MR. SOBOL: Very good.

3 THE COURT: All right. Anything else on  
4 that topic?

5 (No response)

6 THE COURT: Number 15, status of insurers  
7 declaratory judgment actions?

8 MR. SOBOL: So just really flagging two  
9 cases, your Honor, I don't know an awful lot of the  
02:45PM 10 details of exactly where they are at, but there are two  
11 declaratory judgment actions that have been filed for  
12 two excess insurers for Ameridose, Lloyds and Ironshore.

13 The PSC intends to move to intervene in  
14 those actions because, at least one way to look at it,  
15 again, I'm not arguing it, but one way to look at it is  
16 Ameridose is settling of what real dogs does it have in  
17 that hunt, so that's just out there and is going on.

18 MS. PARKER: And --

19 THE COURT: Excuse me, the Oklahoma case?

02:45PM 20 MS. PARKER: Yes, there is another  
21 declaratory judgment action involving ARL, who, as you  
22 know, is in mediation, your Honor. That's pending in an  
23 Oklahoma District Court, I'm sorry, in an Oklahoma State  
24 Court, and the PSC has moved to intervene. It has been,  
25 I believe, let me cautiously say we have moved to

1 intervene in that action as well.

2 THE COURT: All right. Anything else on  
3 that topic? All right. Is there anything else anyone  
4 wants to raise, and while we're doing that, let me look  
5 over my notes.

6 MS. PARKER: Very small housekeeping  
7 matters, your Honor.

8 THE COURT: Yes, Ms. Parker.

9 MS. PARKER: First, and your Honor today  
02:46PM 10 reset the deadline to file responses or motions to  
11 dismiss until January 31st. There are some motions to  
12 dismiss that were filed today, earlier today before this  
13 hearing. We would ask that the deadlines for plaintiffs  
14 to respond to those motions to dismiss that were already  
15 filed today be stayed and perhaps synced up with the  
16 schedule that is later imposed by the Court for  
17 responding to motions to dismiss that come in on  
18 January 31st.

19 MR. CLINE: Your Honor, this is Matt Cline  
02:46PM 20 on behalf of the defendants who filed those motions, and  
21 we're going to oppose the PSC's request here. We don't  
22 see any reason they can't respond.

23 THE COURT: I'm sorry, who do you represent?

24 MR. CLINE: The Tennessee defendants who  
25 filed the motions to dismiss today.

1 THE COURT: All right.

2 MS. PARKER: Without really trying to argue  
3 the issue, your Honor, the reason that we would make  
4 that request is that we expect that motions to dismiss  
5 that are later filed will raise duplicative and similar  
6 issues perhaps specifically relating to Tennessee law,  
7 and the PSC would hope to address those at one shot  
8 rather than do it piecemeal.

9 THE COURT: In other words, we have a  
02:47PM 10 January 31st deadline for filing motion to dismiss,  
11 correct?

12 MS. PARKER: Correct, your Honor.

13 THE COURT: You expect that there are going  
14 to be Tennessee defendants who are going to file on the  
15 31st. In the meantime, Mr. Cline, is it, has filed  
16 motions today, January 10th. In the normal course, the  
17 oppositions would be due January 24th.

18 Yes, what I will do with those motions is  
19 extend the deadline for the PSC to respond. Right now  
02:48PM 20 what I'm going to do is indicate that that response is  
21 due February the 13th, which is the normal two weeks  
22 after the filing of the motion. I may extend that for  
23 good cause shown, but just, again, to sync them up, I'm  
24 going to say February 13th. In the meantime, we'll meet  
25 on February 6th, we'll know what these motions look

1 like, and we can talk about it.

2 MS. PARKER: Thank you, your Honor.

3 THE COURT: Okay.

4 MS. PARKER: The second quick housekeeping  
5 matter, there is a period of tolling that was provided  
6 by an order entered by this Court, which was ECF  
7 Number 723.

8 THE COURT: Yes.

9 MS. PARKER: We would just like  
02:48PM 10 clarification that the provisions of that order would  
11 not be affected by any of the extensions offered today,  
12 imposed today, rather, and that plaintiffs would still  
13 have 30 days from receiving notice of any service defect  
14 to cure those defects.

15 THE COURT: I didn't understand that  
16 anything I did today would affect that order. You're  
17 talking about my order concerning possible defect and  
18 service of process or failure to provide pre-suit  
19 notice, if that's required, in the state law?

02:49PM 20 MS. PARKER: That's correct, your Honor.

21 THE COURT: Unless someone wants to persuade  
22 me differently, I don't see any reason to modify those  
23 deadlines. All right. The order remains in place.  
24 That's the order in Docket 723.

25 MS. DOUGHERTY: Your Honor, if I may.



1 THE COURT: Yes.

2 MS. DOUGHERTY: The order, as we read it, I  
3 think it's a matter for clarification, tolls the  
4 deadline until today for the statute of limitations.

5 THE COURT: Yes.

02:49PM

6 MS. DOUGHERTY: And it doesn't provide any  
7 time now for the plaintiffs to cure it now that they've  
8 been notified of a potential defect, so what we're also  
9 asking for here is not just additional time if we find  
10 out that there's some notice on the 31st when we receive  
11 new motions to dismiss from other parties but also for  
12 30 days to actually cure that defect for the tolling to  
13 not just extend to the date that we get notice of it but  
14 to allow us 30 days to cure it.

15 So extending the deadline for the tolling  
16 for an additional 30 days to allow us to cure the  
17 problem, problems which we would have found out about a  
18 lot sooner.

02:50PM

19 THE COURT: Maybe that's a good idea, maybe  
20 that's not. I'm not sure I'm prepared to do that on the  
21 fly because that's one of the concerns that I have if  
22 there's a one-year period, for example, and it's already  
23 passed, service of process is perhaps different from  
24 these one-year notifications. For good cause shown, I  
25 can enter orders and determine service of process.

1 I guess I don't know enough about the  
2 relevant state law to know whether I have the power to  
3 do that, whether it's appropriate under the  
4 circumstances or for that matter whether I need to do  
5 that. I don't know if anyone is in this boat or not.  
6 I'm going to leave that up to motion practice, in other  
7 words, if there's an issue, we can file a motion, take  
8 it up and let the other side respond. I'm just not  
9 prepared to do it on the fly.

02:51PM 10 MR. GASTEL: To be clear, I don't think that  
11 we're asking for like in addition to the order, it's  
12 more a clarification that the tolling period began I  
13 believe pursuant to the order on the date of the order,  
14 which is December 23d and would extend to January 10th,  
15 2014, and so we would just sort of expect the lead  
16 tolling period to sort of remain in effect and then the  
17 period to cure would sort of continue to accumulate as  
18 days passed from December 23d to present.

19 THE COURT: All right. Again, what I'm  
02:51PM 20 going to do is I'm going to leave the order in place,  
21 and if there's a particular issue or problem, I'll take  
22 it up on motion.

23 MR. GASTEL: Thank you, your Honor.

24 THE COURT: Yes, sir.

25 MR. BLUMBERG: Judge.

1 THE COURT: I'm sorry, can you identify  
2 yourself for the record?

3 MR. BLUMBERG: Jay Blumberg. I have people  
4 feverishly working to get a motion to dismiss filed by  
5 today. Did I understand that the deadline was extended  
6 to the 31st for motions to dismiss? I may have missed  
7 that. I just want a clarification. Is that right?

8 THE COURT: That's right.

9 MR. BLUMBERG: They'll be happy to hear  
02:52PM 10 that, Judge. Thanks.

11 THE COURT: All right. Somewhere in South  
12 Jersey is an associate who I have just made his or her  
13 day.

14 MR. BLUMBERG: But they had nothing to do  
15 with the lane closures on the George Washington Bridge.

16 [Laughter]

17 THE COURT: You come from a tough state.

18 MS. PARKER: One final housekeeping matter,  
19 your Honor. The plaintiffs' steering committee  
02:52PM 20 discovered what it believes is an omission of a word and  
21 perhaps a typographical error in the existing protective  
22 order.

23 THE COURT: Which protective order is that?

24 MS. PARKER: The governing protective order  
25 involving confidentiality pertaining to broadly this

1 litigation.

2 THE COURT: Yes.

3 MS. PARKER: As your Honor mentioned, you  
4 may be making some changes to that order. We would  
5 propose that we identify that to the Court in a pleading  
6 filed early next week should your Honor choose to  
7 address that.

8 THE COURT: I'll hold off on that, so why  
9 don't you get that filed forthwith.

02:53PM 10 MS. PARKER: Yes, thank you, your Honor.

11 THE COURT: Yes. Anything anyone else wants  
12 to take up?

13 MR. LYONS: Judge Saylor.

14 THE COURT: Yes.

15 MR. LYONS: This is Greg Lyons from Roanoke,  
16 Virginia. I apologize for speaking when I had not  
17 previously asked permission to do so. I've been  
18 listening. My firm, Lichtenstein, Fishwick, and there  
19 are some other firms in town represent Virginia injured  
02:54PM 20 parties and actually argued by phone on the trustee's  
21 motion in its earlier iteration, and what I hoped to  
22 clarify was that the extension, of course, is granted in  
23 relation to agenda 11B extends, applies not just to the  
24 PSC but to other Virginia plaintiffs, like my clients,  
25 to respond to the trustee's motion.

1 THE COURT: I guess I don't see any reason  
2 why that shouldn't be true, so I will grant it.

3 MR. LYONS: Thank you very much, Judge.

4 THE COURT: Anything else?

5 MR. SOBOL: No, your Honor.

6 THE COURT: Thank you, all. Have a good  
7 weekend. I'm sure all you join me, especially the  
8 people from Indiana, in saying Go Patriots. We'll see  
9 you on February 6th.

02:54PM 10 (Whereupon, the hearing was adjourned at  
11 2:54 p.m.)

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## C E R T I F I C A T E

UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS ) ss.  
CITY OF BOSTON )

I do hereby certify that the foregoing  
transcript, Pages 1 through 70 inclusive, was recorded  
by me stenographically at the time and place aforesaid  
in MDL NO. 13-02419-FDS, IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY CASES LITIGATION and thereafter by me reduced  
to typewriting and is a true and accurate record of the  
proceedings.

Dated this January 22, 2014.

s/s Valerie A. O'Hara

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VALERIE A. O'HARA

OFFICIAL COURT REPORTER